

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) 3:09-CR-00210-B(1)  
 )  
JESSE WILLIAM MCGRAW, )  
 )  
Defendant. )

COMPETENCY HEARING  
BEFORE THE HONORABLE JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE  
DECEMBER 16, 2010

A P P E A R A N C E S

For the Government:

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For the Defendant:

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COURT REPORTER: SHAWNIE ARCHULETA, TX CCR No. 7533  
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proceedings reported by mechanical stenography,  
transcript produced by computer.

SHAWNIE ARCHULETA, CSR/CRR  
FEDERAL COURT REPORTER - 214.753.2747

1 (In open court.)

2 THE COURT: Case 3:09-CR-210, U.S. v.  
3 Jesse William McGraw. For the government?

4 MS. HEATH: Candy Heath for the  
5 government, Your Honor.

6 MR. DURDEN: Todd Durden for the  
7 defendant, Your Honor. Good afternoon.

8 THE COURT: All right. We're here today  
9 in the McGraw case with regard to a competency  
10 issue, and the Court has now the mental health  
11 evaluation that has been, I believe, received and  
12 will be filed under seal if it hasn't already. I'm  
13 assuming both sides have received this evaluation by  
14 Dr. Morrow. For the government?

15 MS. HEATH: Yes, Your Honor.

16 MR. DURDEN: Yes, Your Honor.

17 THE COURT: All right. And looking at  
18 this and all of the details to it, at least the  
19 opinion of the examining psychologist is that  
20 Mr. McGraw is not suffering from mental disease or  
21 defect. So before we go any further with this and  
22 see what we need to do, I will find out from each  
23 side if they have read the evaluation and if you  
24 agree with it.

25 MS. HEATH: Your Honor, the government has

1 read the evaluation and does agree with it.

2 MR. DURDEN: Your Honor, the defense has  
3 read the evaluation. Understanding the evaluation's  
4 findings would be that the defendant is not  
5 incompetent. It's kind of a double negative, but he  
6 is not incompetent, and we don't have anything  
7 further to offer.

8 We would note that the language on page 6  
9 regarding the narcissistic and paranoid features, it  
10 says it's ruled out, but of course the "ruled out"  
11 is a term of art. It doesn't mean ruled out. I  
12 always like when they say that in there. Because we  
13 use the language, "rule out," it does not suggest  
14 the diagnosis has been ruled out.

15 THE COURT: Well, the critical  
16 determination here that I want to make sure  
17 everybody wholeheartedly, 100 percent, agrees with  
18 is that Mr. McGraw is not currently suffering from  
19 mental disease or defect rendering him unable to  
20 understand the nature and consequences of the  
21 proceedings or to properly assist in his defense.

22 That is, of course, the bottom line  
23 determination and conclusion. And I want to make  
24 sure -- I think you said you agree with that -- but  
25 as his counsel, do you agree with that?

1 MR. DURDEN: Yes, Your Honor.

2 THE COURT: And Mr. McGraw, you are  
3 certainly -- everything I have seen about you -- a  
4 very intelligent young man, and I know you  
5 understand what we are talking about here. You  
6 underwent the evaluation. Do you have anything to  
7 say about this evaluation, anything that you  
8 disagree with or any concerns that you have?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Okay. All right. If not,  
11 then -- give me just a moment.

12 The Court adopts the full conclusions or  
13 report and ultimate determination by the forensic  
14 psychologist that the defendant is not presently  
15 suffering -- let me quote specifically -- not  
16 presently suffering from a mental disease or defect  
17 rendering him unable to assist and unable to  
18 understand the nature and consequences of the  
19 proceedings against him or to properly assist in his  
20 defense. I'm quoting from page 8 of the report.

21 And so, with that, the Court finds -- so  
22 finds, in agreement with the parties and including  
23 the defendant, as well as the forensic psychologist,  
24 that the defendant is competent to stand trial. He  
25 is competent in those terms that are set forth in

1 the report and as the law understands competency to  
2 be defined.

3 And I'm going to then adopt that, that  
4 finding, again, relying on the findings,  
5 conclusions, recommendation and factual  
6 determinations of the forensic psychologist set  
7 forth in the November 18th, 2010, report.

8 From here, then, I want to hear from both  
9 sides as to where each side thinks we go from here  
10 in terms of the conclusion of the case?

11 MS. HEATH: Your Honor, at this point, we  
12 are pending sentencing, and neither party has yet  
13 filed their objections to the presentence report.

14 However, in light of the report that we've  
15 gotten, that the Court just quoted from, from  
16 Dr. Morrow, the government requests that probation  
17 have the opportunity to review that report and to  
18 update if necessary the presentence report and then  
19 start the deadlines over for objections and set a  
20 sentencing date in accordance with that.

21 THE COURT: All right.

22 MR. DURDEN: Defense would join in that  
23 motion, Your Honor.

24 THE COURT: Okay. That request is  
25 granted. I agree with that. I don't know if

1 probation would otherwise be privy to this report,  
2 but they are certainly permitted to review it.

3 It can't be disclosed or disseminated in  
4 any way, but I will agree with the government --  
5 also agreed to, concurred with by the defense --  
6 that they should have access to it.

7 The new schedule that I have put in place  
8 in regard to the sentencing, the sentencing is  
9 scheduled for March 10 at 1:30; that's March the  
10 10th at 1:30 in the afternoon.

11 The presentence report now -- and I don't  
12 have a specific date, and I agree with the  
13 government, so let me ask probation.

14 Do we have probation here?

15 PROBATION OFFICER: Yes, Your Honor.

16 THE COURT: Can you tell me what would be  
17 a date I could put out here as a presumptive date  
18 when you can get that new PSR out.

19 PROBATION OFFICER: Your Honor, to  
20 clarify, one was already submitted. A presentence  
21 report was submitted on July 9th, so the Court wants  
22 an addendum to that presentence report?

23 THE COURT: Well, I think it just needs to  
24 reflect, in however it is that you can most  
25 efficiently do that, that the presentence report and

1 all the findings, conclusions, and recommendations  
2 reflect the probation's review and understanding in  
3 the incorporation of this competency report.

4 PROBATION OFFICER: Yes, Your Honor. Then  
5 probation will submit an addendum, Your Honor, to  
6 the presentence report.

7 THE COURT: All right. And if you don't  
8 mind telling me, so I don't just pin this on you,  
9 what would be a date by which you think you can get  
10 this?

11 PROBATION OFFICER: Your Honor, three to  
12 four weeks will be sufficient.

13 THE COURT: Okay. Here's what we will do,  
14 then. I'm going to go look at the calendar, and I  
15 will submit an amended scheduling order for  
16 sentencing with the presumptive date for the  
17 amendment, as we just discussed, on a certain date,  
18 and then everything else following after that, as we  
19 normally do with the objections and the addendum.  
20 All right?

21 So disregard the sentencing date. I think  
22 we're going to have to go back to the drawing board  
23 and redraw this based upon what we have talked about  
24 today. All right?

25 MR. DURDEN: Yes, Your Honor.

1 THE COURT: Is there anything else before  
2 we adjourn?

3 MS. HEATH: Nothing from the government,  
4 Your Honor.

5 MR. DURDEN: Nothing from the defense,  
6 Your Honor.

7 THE COURT: Thank you. All right. We  
8 will be in recess.

9 (Court in recess at 1:52 p.m.)  
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify  
that the foregoing is a transcript from the record  
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees  
format comply with those prescribed by the Court and  
the Judicial Conference of the United States.

This 20th day of May 2011.

s/Shawnie Archuleta  
Shawnie Archuleta CCR No. 7533  
Official Court Reporter  
The Northern District of Texas  
Dallas Division

My CSR license expires: December 31, 2011

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